IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17756 of 2003 (O&M)
Date of decision: December 4, 2006.

Ex.Hav. Rulda Singh

...**Petitioner(s)**

v.

Union of India & Ors.

...**Respondent(s)**

Present: Shri Rajesh Sehgal, Advocate for the petitioner.

Shri Gurpreet Singh, Advocate for the respondents.

Surya Kant, J. (Oral)

In this writ petition, the petitioner has sought quashing of the order dated 29.4.1998 (Annexure P-5) and dated 27.2.2003 (Annexure P-8) whereby the disability element of pension which was earlier granted to him, has been discontinued. The petitioner also seeks a writ in the nature of mandamus directing the respondents to grant/continue to grant the petitioner the disability element of pension w.e.f. 18.11.1997.

A brief resume of facts may be noticed.

The petitioner was enrolled in the Indian Army on 31.7.1971 and after rendering service of 18 years 1 month and 30 days, he was discharged on medical grounds. The petitioner was put to Re-survey Medical Board for re-assessment of his disability on 17.11.1997 when the Board opined that he was suffering with 20% disability (permanent) and favourably forwarded his case to the Principal Controller of Defence Accounts (Pension), Allahabad. The latter authority, i.e. PCDA(P), however, reversed the opinion of the re-survey medical board and after

holding that the petitioner was suffering with disability which was 11 to 14%, i.e. less than 20%, rejected his claim for the disability element of pension.

It appears that the petitioner was again subjected to medical examination by the Re-survey Medical Board on 8.12.2002 which also opined that he was suffering with disability of 11 to 14% only. On the basis of the said opinion, the petitioner's claim for disability element of pension was turned down prompting him to approach this court.

In view of the judgment of the Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh v. Union of India**, Civil Appeal No.164 of 1993, decided on 14.1.1993 (a copy of which has been appended as Annexure P-10), it can hardly be disputed that the PCDA (P) could not have over-ruled the opinion dated 17.11.1997 of the Re-survey Medical Board. There is also no denial to the fact that once the decision taken by CCDA(P) is set aside, the petitioner is undoubtedly entitled to the grant of disability element of pension w.e.f. 17.11.1997 till 7.12.2002. It is ordered accordingly.

Learned Counsel for the respondents, however, contends that in view of the subsequent re-assessment of the petitioner's disability by the re-survey medical board itself on 8.12.2002, the petitioner is not entitled for the disability element of pension from the said date as his disability was assessed to be 11 to 14% only, i.e. less than 20%. On the other hand, Learned Counsel for the petitioner contends that the said re-assessment of the petitioner's disability by the Re-survey Medical Board was necessitated because of erroneous over-ruling of original opinion of the said Board by the PCDA(P) and once the PCDA(P)'s decision has been set aside, the

petitioner is entitled to the disability element of pension without any further medical examination for the reason that on 17.11.1997, his disability was assessed @ 20% (permanent).

After hearing Learned Counsel for the parties, I am of the view that the petitioner cannot be granted disability element of pension for life without assessment of his disability merely because the re-survey medical board had re-assessed his disability at 20% (permanent) on 17.11.1997. At the same time, the subsequent re-assessment by the re-survey medical board made on 8.12.2002 is also liable to be ignored for the reason that the same was nothing but a mere repetition of the opinion given by the PCDA(P). Consequently, it is directed that by ignoring the re-assessment made by the re-survey medical board on 8.12.2002, the petitioner shall again appear before the Re-survey Medical Board within a period of 3 months from today and incase, upon re-assessment, his disability is found to be 20% or above, it shall relate back from 8.12.2002 thereby entitling him to uninterrupted and continuous grant of disability element of pension. However, if upon re-assessment by the re-survey medical board, the petitioner's disability is assessed to be below 20%, it is obvious that he shall not be entitled for the disability element of pension w.e.f. 8.12.2002 onwards. It is further directed that the arrears of disability element of pension, for the period from 7.11.1997 till 7.12.2002 shall be paid to the petitioner within a period of 3 months from the date of receipt of certified copy of this order.

Disposed of.

December 4, 2006. [**Surya Kant**]
kadyan **Judge**